

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

WILLIAM T. ROWSE et al.

Serial No.: 09/547,661

Filed: April 12, 2000

For: SYSTEM FOR PROCESSING A CUSTOMER CONCERN

Attorney Docket No.: FMC 1185 PUS (81050169)

Group Art Unit: 3629

Examiner: Jonathan P. Ouellette

AMENDED APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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Commissioner for Patents

U.S. Patent & Trademark Office

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

This is an amended Appeal Brief from the final rejection of claims 1, 4, 5, 7-14, 38, 40 and 42-45 of the Office Action mailed on November 2, 2005 and the Notice of Non-Compliant Appeal Brief mailed November 25, 2008 for the above-identified patent application.

I. REAL PARTY IN INTEREST

The real party in interest is Ford Global Technologies, Inc.

II. RELATED APPEALS AND INTERFERENCES

Applicants have submitted concurrently herewith an appeal in a related matter, Application Serial No. 09/547,650 titled Method For Processing A Customer Concern.

III. STATUS OF CLAIMS

Claims 1, 4, 5, 7-14, 38, 40, and 42-45 are pending, have been rejected, and are being appealed.

IV. STATUS OF AMENDMENTS

No amendment has been filed subsequent to the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 recites a system for processing a product concern, such as damage to a vehicle, a vehicle defect, or a vehicle repair. The system includes a service station, such as the example illustrated in Figure 9. The service station includes a first computer 132 and a removable integrated digital camera and scanner unit, 134 and 136 respectively. An embodiment of the integrated digital camera and scanner unit removed from the service station is illustrated in Figure 11. The camera/scanner unit is configured to capture digital information including one or more photographs and identifying indicia (e.g., a barcode) related to the product concern. (Spec., pp. 24-25.) When the camera/scanner unit is placed in electrical communication with the first computer within the service station, the captured digital information is automatically transmitted from the integrated digital camera and scanner unit to the first computer. (Spec., p. 20.) The first computer is configured to generate a claim approval request screen for receiving and displaying the digital information and identifying indicia related to the product concern. One embodiment of this screen is illustrated in Figure 19a, and described on pages 25-27.

The system also includes a reviewer station having a second computer for receiving the captured digital information from the service station and for determining how to address the product concern. (Fig. 1; Fig. 4; Spec., p. 15, ll. 7-23; p. 13, ll. 13-29, p.26.)

A communication port (e.g., modem port 138, LAN port 140, etc.) on the service station enables communication between the service station computer and a reviewer

station. (Fig. 1, Fig. 4, Spec., p. 15, ll. 7-23.) Information relating to the product concern (e.g., photographs, identifier, etc.), is communicated to the reviewer station for determining how to address the product concern. (Spec., p. 13, ll. 13-29.)

Independent claim 40 recites a system for evaluating vehicle warranty concerns in real-time. This system uses an integrated digital camera and vehicle identification device for capturing information relating to a vehicle warranty concern, and transmits the information to a second computer over a communication network for evaluation in real-time. (Spec, p. 21, l. 29 - p. 22, l. 30; Fig. 18).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1 and 4 have been rejected under 35 U.S.C. § 103(a) over Bunte (U.S. 6,330,975) in view of Xactware (www.xactware.com).

Claim 5 has been rejected under 35 U.S.C. § 103(a) over Bunte (U.S. 6,330,975) in view of Chainer (US 6,397,334 B1).

Claims 7-9, 13 and 14 have been rejected under 35 U.S.C. § 103(a) over Bunte (U.S. 6,330,975) in view of Xactware and in further view of Bradbury (US 5,442,512).

Claims 10-12 have been rejected under 35 U.S.C. § 103(a) over Bunte (U.S. 6,330,975) in view of Xactware in view of Bradbury (US 5,442,512) and in further view of Harvey (Harvey US 6,208,507).

Claim 38 has been rejected under 35 U.S.C. § 103(a) over Bunte (U.S. 6,330,975) in view of Xactware.

Claims 40 and 42-45 have been rejected under 35 U.S.C. § 103(a) over Bunte (U.S. 6,330,975) in view of Chainer (US 6,397,334 B1) and in further view of Xactware.¹

VII. ARGUMENT

A. Claims 1 and 4 Are Patentable Under 35 U.S.C. § 103(a) Over the Proposed Combination of Bunte and Xactware.

The Examiner has not established that the Xactware reference (Exhibit A) is a “printed publication.” In the October 7, 2005 final rejection, the Examiner stated that the reference was “retrieved from the Internet Archive Wayback Machine < www.archive.com > , 6/29/1998.”

In their November 23, 2005 remarks, the Applicants’ respectfully traversed the Examiners’ final rejection because the “Internet Archive Wayback Machine” from which the Xactware reference was taken was not publically available until October 2001 — after the Applicants’ filing date.²

In the December 19, 2005 Advisory Action, the Examiner stated:

[T]he Internet Archive Wayback Machine (www.archive.com) is a reference tool used to show proof that a web page was publically available on a sited (sic) date range, not as the actually (sic) source of prior art.

¹ The Examiner introduces the rejection of claims 40 and 42-45 as being unpatentable over the *Bunte*, *Chainer* and *Bradbury* references, (see Final Office Action, p. 8 and Examiner's Answer, p. 5), but substantively applies the Xactware reference rather than the *Bradbury* reference, (see Final Office Action, pp. 9-11 and Examiner's Answer, pp. 6 - 7).

² Exhibit B, p. 1, “With the October 2001 launch of the Wayback Machine, this huge archive is now freely available to the Web public.”

But the Applicants do not dispute the “source” of the Xactware reference. The Applicants contend that the Xactware reference did not qualify as a “printed publication” prior to the Applicants’ date of invention.

To be a “printed publication,” a reference must be “publically disseminated” or “publically accessible.” *In re Klopfenstein*, 380 F.3d 1345, 1348; 72 U.S.P.Q.2d 1117 (Fed.Cir. 2004). To be “publically accessible,” the reference must be catalogued or indexed in such a manner that an interested member of the public can locate the reference. *Id.* For example, a thesis residing in a public library that is not catalogued in a searchable fashion is not a printed publication, regardless of the fact that the thesis physically resided in the public domain. *In re Cronyn*, 890 F.2d 1158, 1161; 13 U.S.P.Q.2d 1070 (Fed.Cir.1989).

The examiner has made no showing that the Xactware reference was publically disseminated or publically accessible (*i.e.* catalogued or indexed in a publically-accessible database) prior to the applicants’ date of invention. But “substantial evidence” is required to support the Examiner’s rejection. MPEP 1216.01; *In re Gartside*, 203 F.3d 1305, 1315, 53 USPQ2d 1769,1775 (Fed.Cir.2000).

MPEP 2128 provides:

A reference is proven to be a “printed publication” “upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it.” *In re Wyer*, 655 F.2d 221, 210 USPQ 790 (CCPA 1981).

* * *

ELECTRONIC PUBLICATIONS AS PRIOR ART

An electronic publication, including an on-line database or Internet publication, is considered to be a “printed publication” within the meaning of 35 U.S.C. 102(a) and (b) provided the publication was accessible to persons concerned with the art to which the document relates. See *In re Wyer*, 655 F.2d 221, 227,

210 USPQ 790, 795 (CCPA 1981) (“Accordingly, whether information is printed, handwritten, or on microfilm or a magnetic disc or tape, etc., **the one who wishes to characterize the information**, in whatever form it may be, **as a ‘printed publication’ * * * should produce sufficient proof of its dissemination or that it has otherwise been available and accessible to persons concerned with the art to which the document relates and thus most likely to avail themselves of its contents.**”

Regarding “public dissemination,” pages on the World Wide Web are not “disseminated” — they are “browsed” using a “Web browser” — the antithesis of dissemination. Many web pages are never even browsed. Regardless, the Examiner has submitted no evidence to show that the Xactware reference was ever “disseminated” to members of the public, or “browsed” by members of the public, prior to the applicants’ date of invention.

Regarding “public availability,” the Examiner has made no showing that the Xactware reference was catalogued, indexed or searchable in any publically-available database prior to the applicants’ date of invention. The Web Archive’s database was not publically available until October 2001. Accordingly, there is no evidence that a person interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, could have located the Xactware reference prior to October 2001. Under *In re Klopfenstein*, *In re Cronyn*, and *In re Wyer*, the Xactware reference was not a “printed publication” before October 2001 — more than a year after the Applicants’ filing date (April 12, 2000).

Claim 4 depends from claim 1 and is allowable for the same reasons stated above. Accordingly, the Applicants respectfully request that the Examiner’s rejections be withdrawn, and that the pending claims be allowed.

**B. Claim 5 Is Patentable Under 35 U.S.C. § 103(a)
Over the Proposed Combination of Bunte and Chainer.**

Claim 5 depends from claim 1 and is, therefore, allowable for the same reasons stated above with respect to claim 1. Accordingly, Applicants respectfully request that the Examiner's rejections be withdrawn, and that the pending claim be allowed.

C. **Claims 7-9, 13 and 14 Are Patentable Under 35 U.S.C. § 103(a) Over the Proposed Combination of Bunte, Xactware, and Bradbury.**

Claims 7-9, 13 and 14 depend directly or indirectly from claim 1 and are, therefore, allowable for the same reasons stated above with respect to claim 1. Accordingly, Applicants respectfully request that the Examiner's rejections be withdrawn, and that the pending claims be allowed.

D. **Claims 10-12 Are Patentable Under 35 U.S.C. § 103(a) Over the Proposed Combination of Bunte, Xactware, Bradbury and Harvey.**

Claims 10-12 depend directly or indirectly from claim 1 and are, therefore, allowable for the same reasons stated above with respect to claim 1. Accordingly, Applicants respectfully request that the Examiner's rejections be withdrawn, and that the pending claims be allowed.

E. **Claim 38 Is Patentable Under 35 U.S.C. § 103(a) Over the Proposed Combination of Bunte and Xactware.**

Claim 38 depends from claim 1 and is, therefore, allowable for the same reasons stated above with respect to claim 1. Accordingly, Applicants respectfully request that the Examiner's rejections be withdrawn, and that the pending claim be allowed.

F. **Claim 40 and 42- 45 Are Patentable Under 35 U.S.C. § 103(a) Over the Proposed Combination of Bunte, Chainer and Xactware.**

Independent Claim 40 is allowable for the same reasons stated above with respect to claim 1. Furthermore, claims 42-45 depend from claim 40 and are allowable for the

same reasons. Accordingly, Applicants respectfully request that the Examiner's rejections be withdrawn, and that the pending claims be allowed.

The fee of \$500 as applicable under the provisions of 37 C.F.R. § 41.20(b)(2) was previously submitted electronically with the original Appeal Brief filed January 17, 2006. Please charge any additional fees or credit any overpayments in connection with this filing to Deposit Account No. 06-1510 (Ford Global Technologies, Inc.).

Respectfully submitted,

WILLIAM T. ROWSE et al.

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Enclosures: Exhibit A
Exhibit B
Appendices

VIII. CLAIMS APPENDIX

1. A system for processing a product concern, the system comprising:

a service station having a first computer and a removable integrated digital camera and scanner unit for capturing digital information including one or more photographs and identifying indicia related to the product concern wherein the captured digital information is automatically transmitted from the integrated digital camera and scanner unit to the first computer upon placing the integrated digital camera and scanner unit in electrical communication with the first computer within the service station, the first computer being configured to generate a claim approval request screen for receiving and displaying the digital information and identifying indicia related to the product concern;

a reviewer station having a second computer for receiving the captured digital information from the service station and for determining how to address the product concern; and

a communication port for connecting the first computer at the service station with the second computer at the reviewer station for transmitting information related to the product concern including the captured digital information.

2.-3. (canceled)

4. The system of claim 1 wherein the at least one identifying indicia is a vehicle identification number; and

the claim approval request screen for receiving and displaying the identifying indicia includes a dialog portion for carrying on a dialog with the second computer.

5. The system of claim 1 wherein the at least one identifying indicia is watermarked onto the one or more photographs.

6. (canceled)

7. The system of claim 1 wherein the service station comprises a housing having a base and a base cover.

8. The system of claim 7 wherein the base comprises a first recessed portion for receiving a computer.

9. The system of claim 8 wherein the base further comprises a second recessed portion for receiving the integrated digital camera and scanner unit.

10. The system of claim 9 wherein the second recessed portion further comprises a plurality of terminals for contacting a plurality of terminals on the integrated digital camera and scanner unit.

11. The system of claim 10 wherein the plurality of terminals comprises a first set of terminals for communication with a first set of terminals for charging the integrated digital camera and scanner unit.

12. The system of claim 11 wherein the plurality of terminals further comprises a second set of terminals for communication with a second set of camera terminals for transmitting data between the integrated digital camera and scanner unit and the first computer.

13. The system of claim 1 wherein the service station comprises a power supply for providing electrical power to the integrated digital camera and scanner unit.

14. The system of claim 1 wherein the service station comprises a battery charger for charging a battery included in the integrated digital camera and scanner unit for providing electrical power to same.

15.-37. (canceled)

38. The system of claim 1 wherein the product concern involves a warranty concern relating to a vehicle.

39. (canceled)

40. A system for evaluating a vehicle warranty concern during a real-time communication session, the system comprising:

a first computer device for receiving information relating to a vehicle warranty concern, the first computer being configured to generate a claim approval request screen for receiving and displaying digital information and identifying indicia related to the vehicle warranty concern;

an integrated digital camera and vehicle identification device for capturing at least one image and an identification for the vehicle, respectively relating to the vehicle warranty concern; and

a second computer device for receiving the information, the at least one image and the identifier via a communication network for evaluation of the vehicle warranty concern during a real-time communication session.

41. (canceled)

42. The system of claim 40 wherein the identification for the vehicle is a vehicle identification number; and

the claim approval request screen for receiving and displaying the identifying indicia includes a dialog portion for carrying on a dialog with the second computer.

43. The system of claim 40 wherein the identification device is a barcode scanner.

44. The system of claim 40 wherein the identification for the vehicle is watermarked onto the at least one image.

45. The system of claim 40 wherein communication between one or more of the devices is via one or more cables.

46.-50. (canceled)

IX. EVIDENCE APPENDIX

Exhibit A, previously filed with the Appeal Brief filed January 17, 2006, is a copy of the Xactware reference that the Examiner relied on in rejecting pending claims 1, 4, 5, 7-14, 38, 40, and 42-45.

Exhibit B, previously filed with the Appeal Brief filed January 17, 2006, is a copy of a web page from <http://www.onlinemag.net> indicating that the Internet Archive database was not available for searching by the public until October 2001.

X. RELATED PROCEEDINGS APPENDIX

None.

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1/03/06 - dschulte

12/8/08 - creyes